U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Citizenship and Immigration Services

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[redacted]

DATE: MAR 0 5 2012 OFFICE: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mari Johnson

S Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner identified himself as a visiting professor at the University of California, Los Angeles (UCLA) and a faculty member of Chengshiu University in Taiwan. On the Form I-140 petition, the petitioner indicated that he seeks a position teaching chemistry and materials science, specializing in synthesis of nanomaterials, polymer materials, nanoinorganic materials and green materials. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel, published materials, and supporting exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on December 31, 2007. In a statement accompanying the initial submission, counsel stated that the petitioner's "work has among other things led to the development of more durable and efficient circuit boards and to significant advances in the organic semiconductor field." Instructed to provide the address where he intended to work, the petitioner provided an address in Taiwan.

The petitioner submitted copies of his published articles and abstracts of his conference presentations. These documents show that the petitioner is a productive researcher, but by themselves these materials are not evidence of the extent to which his work has influenced others or advanced the field.

Several witness letters – nearly all of them printed in blue ink on A4 size (210 mm × 297 mm) paper – accompanied the petitioner's initial submission. The petitioner submitted two letters from [redacted]

> Currently [the petitioner] is a visiting professor in the Department of Molecular and Medical Pharmacology at UCLA. . . . [The petitioner] is carrying out research sponsored by the national science foundation on the Conducting Polymer Nanowire. This work is of fundamental importance in nano-materials, which is of key importance to the biosensor. . . .
>
> [The petitioner] is one of my best professors honored in my university. . . . [The petitioner] investigated an improvement upon the epoxy resin for use as the matrix material for printed circuit boards is called for. His finding in printed circuit board area can lead to improved thermal and dimensional stability and decreased moisture absorption property.

In the second letter, [redacted] described the petitioner's work in greater technical detail, stating that the petitioner has "investigated . . . polymer nanocomposite to improve properties" and created compounds for use in "a new Organic Light Emitting Diodes (OLEDs) materials system," among other achievements. [redacted] asserted that the petitioner's "outstanding work has led to great advances in the field that will significantly improve our capability in characterization of nanocomposites and OLEDs materials."

[redacted]

> [The petitioner] is a widely recognized expert in Synthetic Organometallic Chemistry and has conducted extraordinary and novel research in the area of iridium, zinc and aluminum organometallic complexes . . . used as Organic Light-Emitting Diode (OLED). . . . His work in this area represents a fundamental breakthrough and provides researchers in the field with a radically different way of looking at the synthetic aspects. He has provided a much easier and flexible method to synthesize this important class of material. . . . Because of [the petitioner's] extraordinary contributions to this very line of work, the United States has gained some magnificent advances in both industrial and academic aspects of this field.

[redacted] who worked for various technology companies in the United States before "serving as Legislative Yuan in Taiwan Parliament from 2004 till now" (and whose surname is spelled "Marr" on some documents), stated:

> [The petitioner's] inventive and outstanding research in the field of polymer/clay nanocomposite has led to groundbreaking discoveries. He has demonstrated these polymer nanocomposites to improve properties including enhanced mechanical properties at low loading of nanofillers, increased gas barrier properties while retaining clarity, dimensional stability, etc., and his invention enhance[s] circuit boards lifetime and signal carrying.
>
> [The petitioner] also developed the novel inorganic complexes emitting diodes materials being in measure of the inexpensive, high efficiency, easy synthesis. [The petitioner] has made innovative advances in this area, and his . . . work in this field represents a fundamental significant advance and to furnish researchers in the field with a fundamentally different way [to] observe the synthetic aspects. He has provided a much easier and flexible method to synthesize this significant class of material.

[redacted] *[sic]* and a graduate student at Michigan State University, stated that the petitioner "plays an important role in developing and improving the quality of products at [redacted] With his contribution, we are moving toward a new era of Biotech products." Large portions of [redacted] letter are identical to portions of [redacted] letter. This use of identical language, along with the unusual use of blue ink for most of the witness letters, suggests common origin of at least some of those letters. The AAO acknowledges the endorsements of these witnesses, but the use of substantial passages of shared language greatly reduces the letters' weight as supposedly independent evidence.

The AAO also notes that, although [redacted] letter shows a return address in East Lansing, Michigan, the letter itself is on A4 paper, a paper size common internationally but not normally used in the United States (where 8.5 in. × 11 in. remains the standard). The use of this paper size is yet another similarity between [redacted] letter and others, supposedly prepared independently.

[redacted] claimed to be "leading a group of internationally well-known scientists to develop high-throughput Organic and Inorganic Nano-particles Application, cosmetics ingredients innovation, and biotech products research, development and trade," but the record contains no evidence that Grace Biotechnology is an active company at all, let alone an employer of "internationally well-known scientists." [redacted] herself claimed no professional training in the fields listed in her letter. Instead, she claimed to hold degrees in "Chinese Literature" and "Family Studies." She did not claim how she had the expertise to offer a meaningful evaluation of the petitioner's work.

The witnesses did not identify any ongoing commercial or industrial use of the petitioner's materials. The record does not show the reaction (if any) to the petitioner's work by the manufacturers of such

materials. The petitioner's initial submission contained no objective documentary support for the witnesses' claims.

On April 9, 2008, the director instructed the petitioner to submit evidence of the impact of his work, such as citations of his work in articles by other researchers. In response, the petitioner submitted copies of three articles that contain independent citations of his work. The petitioner did not establish that this is a significant citation rate for a researcher in his field who claimed ten published articles as of the filing date.

[redacted]

> [The petitioner] has managed to increase the production of an unique and original nanomaterial . . . [that] is useful in electronics for the production of printed circuits and conductive plates, which shows good thermal and profile stability and low hygroscopicity. . . .
>
> One of the most important contributions that [the petitioner] has made is the design of a material extremely suitable for the engineering of a special type of blood glucose biosensor, which uses a newly-developed polymer nanocomposite to replace an enzyme used to break down blood glucose. . . .
>
> Another application of [the petitioner's work with] polymer/nano-silver is for the sterilization. . . . These developments will benefit people living in a new nano-industrial environment which is more clean and safe.

The petitioner also submitted what purports to be a partial copy of [redacted] published by [redacted] (no publication date given). One page, apparently representing the back cover of the book (including a bar code), indicated: "This book contains the newest applications of OTFT that [the petitioner] synthesized and fabricated in 2005 to Microstrip patch antenna." The pages in the record resemble first-generation computer printouts rather than scanned or photocopied pages from a printed book, and the submitted excerpts contain grammatical errors (including in the title on the book cover). The record does not establish that Marsland Press is a recognized or reputable publishing house.

An accompanying letter identified [redacted] as director of research and development for [redacted] The similarity of the names [redacted] and [redacted] and the proximity of the two entities (located in adjacent suburbs of Lansing, Michigan) suggest a connection between the two entities, which would mean that [redacted] essentially self-published the book discussed above. [redacted] and the petitioner have collaborated on several articles. In a letter on the petitioner's behalf, [redacted] stated that the petitioner's "published research has attracted international interest," but the assertions of a collaborator are not first-hand evidence of that claimed interest.

[redacted] stated that the petitioner's "research has also made a significant impact on the published research of other scientists in the same field. For instance, [redacted] is one of the many scientists intrigued by [the petitioner's] report published in the Journal of Organometallic Chemistry in 2006." The record contains nothing from [redacted] himself. [redacted] and his colleagues cited the petitioner's work along with eight other articles in a single collective footnote. This reference is not sufficient to support the claim that [redacted] took special interest in the petitioner's work rather than simply considering it along with the general body of research in the area. The AAO notes that [redacted] holds degrees in biochemistry and plant physiology, and it is not immediately clear how this background overlaps with the petitioner's area of claimed expertise in nanomaterials research.

Previously submitted materials identified [redacted] as the executive secretary of [redacted], a journal published by [redacted]. This is further evidence that the petitioner's associates control [redacted] and related entities. The *curriculum vitae* accompanying [redacted] letter does not mention [redacted] at all, but shows that [redacted] worked in East Lansing before moving to New York (also claimed as a base for [redacted]), and it lists numerous articles co-authored by [redacted]. Many of those articles appeared in *Nature and Science*, published by [redacted]. The record, therefore, indicates a pattern of self-publication by the petitioner's associates. The petitioner himself was an associate editor of *Nature and Science* at the time he filed the petition. Therefore, evidence regarding [redacted], its related publications, and its officials has negligible weight in terms of establishing the petitioner's reputation among independent scientists. The record, instead, points to the conclusion that [redacted] is a "boutique" publishing house that publishes the work of its own officials.

The director denied the petition on February 13, 2009, noting the "minimal" citation rate of the petitioner's articles and the lack of truly independent evidence of the importance of the petitioner's work.

On appeal, counsel states: "Citations do not solely determine one's impact on the field; [the petitioner] has shown that he is a uniquely qualified researcher AND that he has experience as a Chemistry Professor both in China and the U.S. as a visiting professor at UCLA." Counsel is correct that citations are not the only possible measure of the petitioner's impact, but in the absence of heavy citation of his work, the petitioner must submit some other form of equally persuasive and reliable evidence.

The record contains no first-hand evidence to confirm that the petitioner was ever a visiting professor at UCLA. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Only one of the petitioner's witnesses, [redacted] did not say that the petitioner was a visiting professor there. A Department of State Form DS-2019 listed the petitioner's "exchange visitor category" as "research scholar." The assertion that the petitioner is a visiting

professor at UCLA is, therefore, an unproven claim rather than evidence in support of the waiver application.

Having claimed that the director relied too heavily on citations, counsel then contends that the petitioner "has an exceptional record of citations and publications by his field's standards." Counsel states that the petitioner has continued to publish new articles, and "has had 11 citations to his papers to date which is considered above average in his field for someone who has published recently" (counsel's emphasis).

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In this instance, articles that the petitioner published after the 2007 filing date cannot retroactively show that he already qualified for the waiver as of that filing date. Also, some of the newly claimed citations relate to those new articles.

The petitioner's most-cited article, from [redacted] in 2005, showed six citations on an http://scholar.google.com printout submitted on appeal. The petitioner does not show how many of these are independent citations. The petitioner submits copies of articles showing that he has cited his own 2005 [redacted] in later works.

The petitioner documents the impact factors (average per-article citation rates) of several journals, including [redacted] which has an impact factor of 2.615. The petitioner's 2005 article exceeded that citation rate, but the success of this one article does not establish a consistent pattern of influence in the field.

Counsel asserts that previously submitted witness letters establish the petitioner's impact on his field. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even

give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 165.

As discussed above, a number of the petitioner's witnesses work in other disciplines and do not show any expertise in the petitioner's field. Others are the petitioner's own collaborators. The petitioner's involvement with Marsland/Marslands appears to have inflated his publication record, and further questions arise from the submission of letters of uncertain authorship, as well as the petitioner's reliance on a letter from the self-described president of a biotechnology company with no evident training in any field related to biotechnology.

The petitioner has clearly been a productive researcher, producing useful articles in peer-reviewed scholarly journals. The record as a whole, however, does not support many key claims about the significance of the petitioner's work or of some of the journals that have published it. This lack of support, in concert with the petitioner's failure to document fairly basic elements of his claim, such as the assertion that he held a visiting professorship at UCLA, inevitably undermines confidence in the petitioner's claims.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.